

The complaint

Mrs P has complained about a conditional sale agreement she had with Moneybarn No.1 Ltd. She says she shouldn't have been given the agreement and she's unhappy with the way Moneybarn dealt with things when she was in financial difficulty.

What happened

Mrs P entered into a conditional sale agreement with Moneybarn in July 2016 to acquire a used car. The cash price of the car was £10,350. The total amount payable including interest was around £20,000 and Mrs P was due to pay this back over five years with monthly payments of around £350.

Around December 2016, Mrs P had some issues making payment towards the agreement, but she brought things up to date. However, Mrs P had further issues making payment a few months later. Moneybarn entered into a payment plan with her, but after missing a payment in April 2017, Moneybarn sent a default notice. It sent a further default notice in July 2017 when she was four months in arrears. Moneybarn went on to terminate the agreement in August 2017.

Mrs P contacted Moneybarn to explain her situation, and that she wanted to keep the car. Moneybarn explained her options including a consent order. It asked her to complete an income and expenditure form. Mrs P responded with information, but she didn't supply everything Moneybarn had asked for. So Moneybarn instructed agents to recover the car. Its agents visited Mrs P's work address and arranged to recover the car. The car was sold at auction for £6,800, which left Mrs P owing around £11,000. Moneybarn passed this to a debt collection firm.

Mrs P complained to Moneybarn. She said she thought she'd been mis-sold the agreement and that Moneybarn shouldn't have granted her the finance. She also complained about how the arrears were dealt with and that the car was recovered from her place of work.

Moneybarn didn't uphold the complaint, so Mrs P referred it to the Financial Ombudsman.

One of our investigators looked into things but didn't think there was sufficient evidence to uphold the complaint. He thought Moneybarn completed adequate affordability checks. He also thought it made fair attempts to discuss the debt with Mrs P over a few months and that it let her know she had options if she was struggling to pay the debt. Our investigator didn't think it was unfair the car was recovered from Mrs P at her place of work in the circumstances.

Mrs P didn't agree. She said she was unfairly treated by Moneybarn when she was in arrears. She said she thought she was still negotiating with it when it turned up to recover the car. And that this is the part of her complaint she wants referred to the ombudsman. She also referred to a fine the Financial Conduct Authority (FCA) imposed on Moneybarn for unfair treatment of customers in arrears at the time she had her agreement with it.

I issued a provisional decision that said:

We've explained how we consider complaints about unaffordable lending on our website. I've thought about this approach when deciding this part of Mrs P's complaint.

Moneybarn was required to make sure, via its lending decision, that Mrs P could sustainably repay the borrowing. The checks that Moneybarn were required to carry out had to be 'borrower focused'. So instead of seeing how statistically likely Mrs P was to repay the borrowing, it needed to assess whether she could sustainably repay the borrowing, taking into account her personal circumstances. And it needed to base its creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors such as (but not limited to): the type, amount and duration of the credit; the frequency and size of the repayments; the total amount payable and total charge for credit; the interest rate and any other costs which may be payable; any other potential adverse consequences for the customer arising from a failure to make payment.

In this case, Mrs P was asked to pay back around £20,000 over five years with payments of nearly £350 – a significant commitment over a moderate term.

Moneybarn tells us it carried out a full credit search before deciding to lend to Mrs P. It said the search detailed Mrs P's borrowing levels, the repayment history, details of arrears and past defaulted accounts. Moneybarn verified Mrs P's income of around £2,900 by reviewing bank statements. It also said it applied a calculation to allow for non-discretionary expenditure.

Moneybarn says its checks found that Mrs P's borrowing levels were £369. There were no recent missed payments and that her file showed a strong ability to meet her commitments. But its checks did show she had defaulted on previous borrowing, the most recent having been entered eight months prior to her application. It also noted there was a County Court Judgment (CCJ) on her file, but the value was considered minimal and was from seven months before. Moneybarn estimated Mrs P's disposable income to be £741.25 which was sufficient for the payment of around £350. Moneybarn also highlighted documentation provided to Mrs P at the point of supply setting out she should let it know if she didn't think the agreement was affordable.

I've not seen the evidence of the credit search that was carried out, but I've thought about what Moneybarn has said, and what it's likely to have seen. I'm mindful there's evidence Mrs P was struggling with some of her commitments. And that there was evidence she'd struggled within the previous year. But I note Moneybarn had copies of Mrs P's bank statements from around the time she entered into the agreement. I think these provide a good measure for Moneybarn to have weighed up Mrs P's income and expenditure. So I think it's checks went far enough.

I've considered whether Moneybarn made a fair lending decision based on the checks it carried out. Like our investigator pointed out, Mrs P's bank statements from around the time of the lending show she had around £2,700 of income per month. Her set out her regular outgoings were around £1,000. I think this would indicate she'd be able to sustainably repay the borrowing of around £350 per month. So I find Moneybarn made a fair lending decision based on the evidence I've seen it had.

I've also thought about how Moneybarn treated Mrs P when she was in financial difficulties. I've looked what happened after December 2016, when she started to have issues making payment. And I've focussed on the period after February 2017 (when the agreement was up to date).

I think Moneybarn was proactive when Mrs P started to miss payments from March 2017. It contacted Mrs P about the missed payments. It offered the sort of forbearance I'd have expected. It allowed Mrs P more time to make payment. And I can see in March 2017 it also agreed a three-month £20 payment plan because Mrs P said she was in the process of closing her business.

When the plan failed in May 2017 it attempted to contact Mrs P various times by phone, text and email. It didn't receive a response and so it sent a default notice in July 2017. I don't think that to be unfair considering it was unable to reach Mrs P and she was falling further behind on her agreement.

It made various other contact attempts through July 2017, but as it didn't hear back, the agreement was terminated on 2 August 2017. It then started to take steps to recover the car. Given the agreement had been terminated and Mrs P wasn't responding, I don't find that to be unfair either.

I can see Moneybarn did eventually speak to Mrs P in mid-August 2017. Moneybarn's notes set out she said the arrears were due to problems with her work and a breakdown of a relationship. It looks like Moneybarn discussed Mrs P's options, which is what I'd expect. The notes say Mrs P wanted to keep the car. Moneybarn said the recovery agents couldn't be put on hold, so if Mrs P wanted to do that, she'd need to send over documents including payslips straight away. It looks like this was so a consent order could be drawn up. Moneybarn noticed the car hadn't been taxed and said Mrs P would have to rectify this in order to enter a consent order. I find that to be a reasonable request.

Mrs P sent over a file, but Moneybarn wasn't able to open it. So she agreed to post the documents on 22 August 2017. They weren't received straight away so Moneybarn continued to make various attempts to speak to Mrs P. Aside from Mrs P saying she was collating them, Moneybarn didn't hear anything, and it started to commence tracing proceedings so it could recover the car. Seeing as though it hadn't heard back from Mrs P, I think this was a fair step for it to take.

Mrs P did send documents in on 14 September 2017. And Moneybarn wrote to her the same day asking her to contact it. It tried again a few days later but didn't hear back. The car was recovered on 25 September 2017 from Mrs P's place of work.

I appreciate Mrs P thinks the car was taken unfairly and that she was still negotiating with Moneybarn. But having considered the events that led up to the recovery, I'm not persuaded Moneybarn acted unfairly. It made significant attempts to speak to Mrs P about the arrears, but it only managed to speak to her a handful of times. I appreciate Mrs P was going through a lot at the time, but I do have to bear in mind the car belonged to Moneybarn, and Mrs P's arrears weren't reducing. From what I can see when Moneybarn did speak to Mrs P it sought ways to help her. By the time the car was recovered, I appreciate Mrs P had sent in documents for Moneybarn to consider, but Moneybarn had already started recovery proceedings. Mrs P wasn't responding to it. And from looking at the notes, Moneybarn had explained to Mrs P that time was of the essence.

Taking all this into account. I think Moneybarn did try to give Mrs P enough breathing space. But by the time it recovered the car it was struggling to get hold of her. The agreement had already been terminated. So I don't consider it was an unreasonable step for it to take to recover the car. I do appreciate this must've been very upsetting for Mrs P.

Moneybarn sold the car and has deducted the sale proceeds from the debt. I think, in the circumstances, given Mrs P was in financial difficulties, it ought to have considered counting the sale proceeds as an early repayment and applying an early settlement rebate to reduce

the outstanding balance. Moneybarn has received a lump sum it otherwise wouldn't have done. The FCA sets out that firms should treat customers in default or in arrears difficulties with forbearance and due consideration. An example of this could be to consider suspending, reducing, waiving or cancelling interest charges. I appreciate Mrs P doesn't have an automatic right to a rebate when the car is sold, but I find, in the particular circumstances of Mrs P's complaint, this would be a fair and reasonable step for Moneybarn to take. And of course, should Mrs P still be in financial difficulties, Moneybarn should continue to treat her with forbearance and due consideration.

I've also thought about Mrs P's complaint that the car was recovered from her place of work. Again, I can understand this must have been upsetting for her. But having considered the circumstances, Moneybarn had been making many attempts to speak to Mrs P. Mrs P had told it she had been changing addresses. It looks like there were little options for the recovery agents, so it sought the car at her workplace. Had Mrs P been in contact with Moneybarn I don't think this would have happened. But I don't find there's sufficient grounds to say this was unfair.

Finally, I note Mrs P has mentioned that Moneybarn received a fine in relation to how it treated customers in arrears around the time she had the agreement with it. Mrs P's account wasn't found to be included in the scheme. I'm required to look at cases on an individual basis. And for the reasons given above, I've not seen enough to say Moneybarn initially treated Mrs P unfairly when she was in arrears. And I've set out what I think it should do with the outstanding balance in relation to treating her fairly.

All things considered, while I know it'll disappoint Mrs P, I don't consider Moneybarn made an unfair lending decision. I don't consider it initially treated her unfairly when she was in arrears. But I think it fair it applies an interest rebate in relation to the sale proceeds it received.

Moneybarn accepted the recommendations. And said that as the debt was sold to a third party it would calculate the interest rebate and provide it directly to Mrs P. But it said it would be up to Mrs P to put it towards the debt.

Mrs P had nothing further to add.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has disagreed with my provisional findings, I see no reason to depart from the conclusions I've reached in my provisional decision. I think Moneybarn's proposal to reimburse Mrs P direct the equivalent amount of the interest rebate seems fair and reasonable given it no longer owns the debt. Mrs P may wish to consider using this to reduce her debt with the new debt owner.

My final decision

My final decision is that I uphold this complaint and direct Moneybarn No.1 Ltd to reduce the amount owed by applying an interest rebate calculated in line with early settlement regulations for the £6,800 sale proceeds it received. The equivalent amount can be paid direct to Mrs P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 31 May 2023.

Simon Wingfield
Ombudsman